

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

JERALD CEDRIC COOPER
REGINA LORAIN TURNER COOPER

Debtors

JERALD CEDRIC COOPER
REGINA LORAIN TURNER COOPER

Movants

v.

BENEFICIAL TEXAS, INC.

Respondent

Chapter 7 Case

Number 89-40617

FILED

at 12 O'clock & 01 min. PM

Date 10/5/89

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER ON MOTION TO AVOID LIEN

The Debtors' Motion to Avoid Lien of Beneficial Texas, Inc., ("Beneficial") was heard on August 16, 1989. After consideration of the evidence and applicable authorities I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) On May 22, 1987, Debtors Jerald and Regina Cooper executed a promissory note and security agreement in favor of Beneficial. Part of the collateral pledged to Beneficial to secure said indebtedness by the Debtors was a three piece table set and a five piece dining room set which was pledged under a paragraph which read "PRIOR PURCHASE MONEY SECURITY INTEREST: The following property is property in which the creditor previously had a purchase money security interest".

2) In fact, Debtors had previously borrowed money from Beneficial for the purpose of purchasing those items and Beneficial had retained a valid purchase money security interest in them. When the May 22, 1987, note was executed, Beneficial paid off the purchase money account, advanced additional funds, and combined the total into a single note. Debtor contends that Beneficial lost its purchase money security interest by virtue of its paying off the first loan.

3) The creditor contends that its purchase money interest continued to have such a status and thus be beyond the

avoidance powers of the Debtors in this case pursuant to the language of the security agreement quoted above.

CONCLUSIONS OF LAW

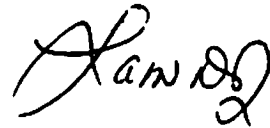
After consideration of applicable authorities, I find that the creditor's contention is adversely controlled by the decision of Henderson v. Farmers Furniture (In the Matter of Henderson), Ch.7 Case No. 687-00169 (Bankr. S.D.Ga., April 29, 1988). Henderson provides that a seller may retain a purchase money security interest in the unpaid balance of a prior contract when consolidated with a subsequent contract provided that there is an express first in first out clause specifying the order in which purchases are to be paid off, and the amount still due on each item and secured by the paid up items. Id. at 6-10 [citing In re Manuel, 506 F.2d 990 (5th Cir. 1975); In re McCall, 62 B.R. 57 (M.D.Ala. 1985).]

I find that the quoted language is sufficient to constitute a grant of a security interest in favor of the creditor. However, the failure of the contract to provide with specificity the manner in which a purchase money security interest would be released

as payments were received and applied results in the creditor's lien being reclassified as a non-possessory non-purchase money security interest which is avoidable under 11 U.S.C. Section 522.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT THAT the lien of Beneficial Texas, Inc., is avoided to the extent it impairs the exemption of the Debtors.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 4th day of October, 1989.